

MARK JONES)	
Claimant)	
VS.)	
)	Docket No. 1,003,537
MARRONE’S, INC.)	
Respondent)	
AND)	
)	
WAUSAU)	
Insurance Carrier)	

Claimant worked for respondent, a restaurant supplier, for approximately two and one-half years before the alleged March 29, 2002 accident. On that date, claimant alleges that he was performing his duties as a freezer supervisor when he fell approximately six feet from a ladder to the concrete floor. At the June 2002 preliminary hearing, claimant described the accident, as follows:

I was standing on a ladder and well, before I went to get on the ladder I got my helper which is Gary Spurling and I told him I needed some help because I lost a pallet in the bin and I needed him to hold my ladder for me. I was going to have to put one foot on the ladder and one foot on the pallet to get leverage to pull the pallet back out of the bin. It was a light pallet but I didn't want to damage no product. At this time when I was up standing on the ladder and trying to get it on there all of a sudden I fell. I landed, when I landed my arm right here was underneath the ladder and I had landed on this part right here (indicating) which when I hit I got up, you know, I felt pain but you know, I thought maybe when you fall you sometimes think you are hurt and you can shake it off and I was upset because I asked my helper what were you doing and he just stood there and I said well, before I lost my cool, I said you need to get this product stocked, get it down and get it stocked and I proceeded through the freezer. When I made to it *[sic]* the front room I passed out on the floor and I got the door open to the freezer that goes out into the dry floor, I got it open and a *[sic]* passed out. I woke up on my back. When I woke up I was really scared, I got up and went out the freezer door and I made it to the little table that sits outside the freezer which I use for my desk for my paperwork and stuff.¹

Accordingly, claimant contends that he initially fell from a ladder and shortly afterwards fainted as he was walking through the freezer.

Shortly after the alleged accident respondent's president, Albert Marrone, took claimant to the hospital emergency room, where claimant was treated and released. But after he had gone home, claimant began feeling worse and again fell. Claimant's wife then took him to another hospital, where he was admitted for treatment of a ruptured spleen, rib fracture and elbow contusions.

Claimant acknowledges that he did not tell the employee who summoned Mr. Marrone about falling from a ladder, nor did claimant then tell Mr. Marrone about falling from a ladder, nor did claimant tell the personnel in the first emergency room about falling from a ladder, nor does claimant recall telling anyone at the second hospital at any time during his stay about falling from a ladder.

Moreover, claimant signed an injury report dated April 5, 2002, in which the accident was described as "[g]oing to turn in order and passed out." And claimant signed an injury report dated April 8, 2002, in which the accident was described as "[w]alking to front to hand in orders, passed out on floor." But neither report mentions the ladder incident.

The medical history contained in the March 29, 2002 notes from St. John's Regional Medical Center indicates claimant fell to the floor after feeling faint. That history reads:

¹ P.H. Trans. at 9-10.

The patient is a 34-year-old white male who was admitted to the St. John's Regional Medical Center on the date of 3/29/2002 with a principal diagnosis of syncopal episode, abdominal pain. The patient relates that he was at work on the date of 3/29/2002 when he felt as if he was going to faint. The patient states that he fell to the floor at that time. The patient did relate that he had lost consciousness during the fall. He relates that when he awoke he was lying on the floor. He relates that he developed some left upper extremity pain and some abdominal pain following his fall. The patient is specifically complaining of left upper quadrant abdominal pain. He denies having nausea, emesis, elevated temperatures. The patient does describe having a vague headache.

The patient was initially evaluated at the St. John's Emergency Room. While in the emergency room, the patient underwent a lumbar puncture and cranial CT scan. These test[s] were within normal limits. The patient was then admitted for further observation.

The patient does relate that he recently had an episode of "influenza". The patient stated that he had an episode of abdominal cramping, nausea, emesis, headache, and diarrheal stools. Apparently symptoms began 2-3 days prior to the day of admission. He relates all of the symptoms resolved on the day prior to admission.²

Additionally, the medical history contained in Dr. Rex A. Gallemore's April 19, 2002 notes indicates that claimant fell but does not mention falling from a ladder.

This claim, perhaps more so than others, hinges on claimant's credibility. The evidence is overwhelming that claimant did not initially advise respondent that he had fallen from a ladder, nor is there any evidence that claimant advised the medical personnel that he had fallen from a ladder. But there is a common thread in claimant's history of the accident which is claimant fell after feeling faint.

At this stage of the claim, the Board finds that claimant has failed to prove that he fell from a ladder while working for respondent. Conversely, the Board finds that claimant fainted and fell while walking to the front to turn in an order. Nonetheless, claimant has failed to establish his right to receive benefits in this claim.

Not all accidents are compensable under the Workers Compensation Act. The Act requires that an accident arise out of and in the course of employment.³ And in this claim there has been no showing that claimant's fainting spell, fall, or injuries were caused, or

² P.H. Trans., Resp. Ex. 1 at 7.

³ K.S.A. 44-501(a).

contributed to, by his work activities. Consequently, there is no showing that claimant's fainting spell and resulting fall arose out of his employment.

The Board notes that respondent and its insurance carrier's arguments that claimant is not credible because he had prior workers compensation claims is without merit. Moreover, the Board reminds respondent and its insurance carrier's counsel that only convictions for crimes involving dishonesty or false statement are relevant for attacking credibility. Accordingly, in this instance the Board has not given any weight to the testimony regarding those earlier matters.

The August 22, 2002 preliminary hearing Order should be reversed.

WHEREFORE, the Board reverses the August 22, 2002 preliminary hearing Order and denies claimant's request for benefits.

IT IS SO ORDERED.

Dated this ____ day of February 2003.

BOARD MEMBER

c: James R. Shetlar, Attorney for Claimant
Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Director, Division of Workers Compensation